

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

Contents

| | |
|--|----|
| <u>Overview</u> | 2 |
| <u>General</u> | 2 |
| <u>Employment/Compensation</u> | 3 |
| <u>Employment/Compensation - Former Officials and Employees</u> | 4 |
| <u>Financial Gain/Influencing Decisions</u> | 6 |
| <u>Hiring/Voting to Hire Individuals Related (Nepotism)</u> | 8 |
| <u>Legislators and Statewide Elected Officials</u> | 9 |
| <u>Performing Service/Conducting Business with a Political Subdivision</u> | 10 |
| <u>Political Appointments</u> | 11 |
| <u>Quid Pro Quo</u> | 12 |
| <u>Voting</u> | 12 |

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

Overview

1. **Question:** What laws govern conflict of interest?

Answer: This FAQ includes information specifically from the Missouri Constitution and Missouri Revised Statutes Section 105.450 – 105.467, RSMo. The statutes generally address financial gain by an official, employee, spouse, dependent child, or business of the official or employee. Because the statutes are very specific, the statutory language should always be read. The Missouri Ethics Commission issues advisory opinions on the MEC [website](#).

Conflict of interest laws may also be contained in the statutes which address the agency or political subdivision, including:

- ✓ Chapters 26–30: Executive branch of government
- ✓ Chapters 46–70: Counties, townships, political subdivisions
- ✓ Chapters 71–100: Cities, towns, villages
- ✓ Chapters 190: Emergency services
- ✓ Chapters 347–360: Corporations, associations, partnerships-public bodies
- Chapters 620-680: Other executive departments

State departments, officials and boards and commissions may have a specific conflict of interest policy or order in addition to the statutes. Cities, counties, school districts, and other political subdivisions also adopt local ordinances, charters, laws, policies, and procedures regulating conflict of interest.

General

1. **Question:** Who is required to follow the conflict of interest laws? (Missouri Constitution, Chapter 105, RSMo.)

Answer: The following individuals are named in the Missouri Constitution and Chapter 105 of the Missouri Revised Statutes:

- ✓ Statewide elected officials
- ✓ Elected or appointed public officials
- ✓ Employees of the state and other political subdivisions
- ✓ Members of a political subdivision, governing, and legislative bodies
- ✓ General Assembly members

2. **Question:** What conduct do the conflict of interest laws cover? (Missouri Constitution, Chapter 105, RSMo.)

Answer: Generally, the Missouri Constitution and Missouri Revised Statutes address the following:

- ✓ Employment and compensation in other capacities
- ✓ Financial Gain/Influencing Decisions

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

- ✓ Hiring or voting to hire individuals related by blood or marriage (Nepotism)
- ✓ Performing a service or conducting a business transaction with the political subdivision

Employment/Compensation

1. **Question:** If the political subdivision has adopted a law or ordinance specifically establishing the public official's salary, can the public official be paid wages for additional services performed as the official? (Section 105.454, 105.456 105.458, 105.462, RSMo.)
Answer: No, the public official cannot be paid wages for additional services performed beyond the salary already established by the political subdivision. For example, a Mayor cannot receive additional payments for services as Mayor beyond the official salary.
2. **Question:** Can an elected/appointed public official receive compensation from the political subdivision, for additional employment services performed for the political subdivision? (Section 105.454, 105.456, 105.458, RSMo.)
Answer: No, see Sections 105.454, 105.456, and 105.458 RSMo., for specific requirements. Generally, a public official or employee cannot be paid wages for additional services performed beyond their normal compensation. Other state law and the political subdivisions laws or ordinances may establish specific compensation for an elected/appointed public official or employee; these should also be consulted.
3. **Question:** Can an employee or other elected official of an agency/political subdivision, **who** has authority to adopt rules or regulations receive compensation from the agency/political subdivision for additional employment services performed for that agency/political subdivision? (Section 105.462(2), RSMo.)
Answer: No, a person described above who has the authority to adopt rules or regulations, other than internal affairs of the agency, cannot be paid for additional services performed beyond their normal compensation. This includes a person authorized to fix any rate, adopt zoning or land use planning regulations or plans, or who participates in or votes on the adoption of any such rule, regulation, rate, or plan.
4. **Question:** Can a school board member also be a paid substitute teacher for the school district? (Missouri Ethics Commission Advisory Opinion 1999.06.107)
Answer: No, the school board member cannot be paid wages for additional services performed beyond their normal compensation.
5. **Question:** Can a Mayor of a 4th Class City also be employed as the City Administrator? (Missouri Ethics Commission Advisory Opinion 2008.09.CI.008)
Answer: No, the Mayor could not retain his elected position and also be employed as City Administrator, and the Mayor is prohibited from assuming the position for one year from leaving office.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions

UPD 06/23/2015

[Back to Index](#)

6. **Question:** Can a mayor or board member receive per diem payments for work done for the political subdivision? (Missouri Ethics Commission Advisory Opinion 2008.06.CI.004)

Answer: No, a member of a legislative or governing body may not receive payment, including per diem payments for work done for the political subdivision.

7. **Question:** Can a board member of a political subdivision provide volunteer services for the political subdivision? (Missouri Ethics Commission Advisory Opinion 2006.12.106, 2001.01.100)

Answer: Yes, the Board member can provide volunteer services, but may not receive any monetary gain from the political subdivision.

8. **Question:** Can a city administrator or city alderman be paid for performing additional services such as grounds keeping? (Section 105.458, RSMo.)

Answer: The elected or appointed official, serving in an executive or administrative capacity, can be paid for performing services like grounds keeping *as long as* the service is:

- ✓ Not over \$500/transaction/\$5,000* annually *or*
- ✓ Awarded under contract after public notice, competitive bidding, *and* the official's bid was the lowest received. The official must not participate in the vote to award the contract, request for bidding process, or receive any confidential information related to the bid for services.

This service is not to be confused with employment, as the administrator or alderman *cannot be* otherwise employed by the political subdivision.

***NOTE:** Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."

9. **Question:** Can a retired employee of a school district who is receiving retirement incentive checks, in exchange for performing advisory services for the district, also serve on the school board? (Missouri Ethics Commission Advisory Opinion 2000.03.104)

Answer: No, the retired employee may not serve on the school board while receiving additional compensation in the form of retirement incentives.

Employment/Compensation - Former Officials and Employees

1. **Question:** Can former officials and employees take positions immediately upon leaving public employment which may influence the decisions of their former agencies or departments? (Section 105.454(5), RSMo.)

Answer: No, elected and appointed officials and employees serving in an executive or administrative capacity may not be paid to perform any service for one year after they leave public employment by which they attempt to influence a decision of any agency of the state or political subdivision in which they were an officer, employee, or over which they had supervisory authority.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions

UPD 06/23/2015

[Back to Index](#)

2. **Question:** Are there any exceptions to this one- year rule? (Section 105.454(5), RSMo.)
Answer: Yes, former officials and employees may be paid, within one year of leaving public employment, to appear in an adversary proceeding or to prepare or file a public document. Former officials and employees may be employed by other departments, divisions or agencies of the executive branch of state government.
3. **Question:** Can former officials and employees take positions upon leaving employment which directly impact issues they were involved with while in public employment? (Section 105.454(6) RSMo.)
Answer: No, former elected or appointed officials and employees serving in an executive or administrative capacity may not be paid by a person, firm, or corporation in relation to any case, decision, proceeding or application with which they were directly concerned or personally participated in after leaving public service or employment. There is no time period attached to this rule.
4. **Question:** Do the laws relating to employment of former officials and employees apply to all public employees? (Section 105.454, RSMo.)
Answer: No, the laws only apply to elected or appointed officials and employees serving in an executive or administrative capacity. Also, consult Section 105.462, RSMo. for specific requirements for prohibited acts by persons with rulemaking authority.
5. **Question:** Can former officials and employees of a state agency or political subdivision who have power to adopt rules and regulations, take positions immediately upon leaving public employment which may influence their decisions of their former agencies/political subdivisions? (Section 105.454(6), RSMo)
Answer: No, a person described above who has the authority to adopt rules or regulations, other than internal affairs of the agency, cannot be paid to perform any service for one year after they leave the agency with which he/she served as a official or employee by which they attempt to influence a decision or action of which he/she served. This includes a person authorized to fix any rate, adopt zoning or land use planning regulations or plans, or who participates in or votes on the adoption of any such rule, regulation, rate, or plan.
6. **Question:** Can a former state employee division director, be paid to speak about the process the state uses and educate about state processes? (Section 105.454, RSMo.)
Answer: Yes, the former state employee division director may provide speaking and educational services; here, the employee would not be attempting to influence a decision of their former state agency. The statute specifically does not allow a former state employee, who served in an executive or administrative capacity, to be paid for one year from leaving state employment, to attempt to influence a decision of the former division or department.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions

UPD 06/23/2015

[Back to Index](#)

7. **Question:** Can a board member of a political subdivision resign and take a paid position within the political subdivision within one year? (Missouri Ethics Commission Advisory Opinion 2009.04.CI.003, 2008.03.CI.001)

Answer: The board member may not perform any service for pay in which he attempts to influence the board of the political subdivision. This may include positions which affect policy such as employment decisions, but does not include purely ministerial positions.

8. **Question:** Can a former alderman be paid by the city to act as a liaison between the city and contractors for a project that the alderman was involved in? (Missouri Ethics Commission Advisory Opinion 2009.01.CI.001)

Answer: No, to the extent that the position could be considered one of attempting to influence the Board of Alderman, the former alderman could not take this position within one year of leaving office.

9. **Question:** Can an ambulance district board member resign and become the paid administrator for the district? (Missouri Ethics Commission Advisory Opinion 2003.01.101)

Answer: No, the board member may not become a paid administrator for one year after leaving office.

Financial Gain/Influencing Decisions

1. **Question:** Can public officials or employees act or vote on decisions which may financially impact themselves or their family? (Section 105.452(4), 105.452(5), and 105.454, RSMo.)

Answer: The statutes provide specific instances that a public official or employee cannot take part in, including:

- ✓ Decisions that may financially impact themselves or their family when the vote would provide them, their spouse, or dependent child a special monetary benefit which is not provided to a larger class. The term special monetary benefit is defined in the statute as "being materially affected in a substantially different manner or degree than the public in general or members of a special class will be affected." (Section 105.452(4), RSMo)
- ✓ An official or employee may not use decision-making authority for the purpose of obtaining a financial gain which materially enriches themselves or their spouse or dependent children for the purpose of coercing or extorting from another anything of actual monetary value. (Section 105.452(5), RSMo)
- ✓ Public officials or employees, serving in an executive or administrative capacity, may not participate in any matter where they attempt to influence any decision of any agency of the state or political subdivision when they know the result of the decision *may* be the acceptance of the performance of a service or the sale, rental,

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions

UPD 06/23/2015

[Back to Index](#)

or lease of any property to that agency for consideration in excess of \$500 per transaction or \$5,000* annually to:

- Themselves, their spouse, or a dependent child in custody *unless* the transaction is made after public notice, competitive bidding (other than real property), and the bid accepted is the lowest bid *or*
- Any business with which they are associated unless the transaction is made after public notice for real property and public notice or competitive bidding for other property. The official or employee's bid must be the lowest received. This includes officers and members of a Board of Directors doing business with the state or political subdivision. (Section 105.454, RSMO)

***NOTE:** Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."

2. **Question:** What is the definition of a business with which the official or employee is associated? (Section 105.450(3), RSMo)

Answer: Businesses include sole proprietorships; partnerships or joint ventures, other than as a limited partner of a limited partnership; corporations or limited partnerships in which the person is an officer or director, or owns more than 10% of the outstanding shares of any class of stock or partnership units; or trusts. The business relationships include spouses and dependent children.

3. **Question:** Can public officials or employees vote on their own retirement benefits? (Section 105.452, RSMo.)

Answer: Yes, public officials or employees can vote on retirement benefits as long as there is no special monetary benefit and they will be treated as any other member of the retirement class.

4. **Question:** What are the laws relating to confidential information? (Section 105.452, RSMo.)

Answer: Public officials and employees of the state or a political subdivision may not use or disclose confidential information obtained in their official capacity or during employment with the intent of financial gain for themselves, their spouse, dependent children, or any business with which they are associated.

5. **Question:** What are some examples of improperly using or disclosing confidential information?

Answer: Examples include using or disclosing confidential information while competitively bidding for services to be performed for the political subdivision, contract negotiations with a political subdivision, selling or leasing property to a political subdivision, or information learned about litigation involving a political subdivision which may financially benefit the official or employee.

6. **Question:** Can a public official or employee be paid by a third party to influence a decision of the state or political subdivision? (Section 105.454, RSMo.)

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

Answer: No, public officials and employees may not perform services while in office or employed from any person, firm or corporation to influence a decision of any agency of the state, or political subdivision in which they are an officer or employee or over which they have supervisory power.

Hiring/Voting to Hire Individuals Related (Nepotism)

1. **Question:** What is nepotism?

Answer: Nepotism, defined in Article VII, Section 6 of the Missouri Constitution, occurs when a public officer or employee in this state names or appoints to public office or any employment a relative related within the 4th degree, by blood or marriage. You should consult the political subdivision's ordinances, policies, and procedures for any further requirements related to nepotism.

2. **Question:** What is consanguinity and affinity?

Answer: Consanguinity means being related by blood or descended from a common ancestor. Affinity means a relationship by marriage or adoption, not a blood relationship. A relationship by marriage (affinity) terminates if death or divorce occurs.

3. **Question:** How do I know if a relative is within the 4th degree of blood or marriage?

Answer: There are numerous charts which outline degrees of family relationships available on the Internet or you may use the [Relationship Chart](#) found on the Commission's website. The 4th degree includes a great-great-grandparents, great-aunt or uncle, 1st cousin, great-niece or nephew and great-great-grandchild.

4. **Question:** What is the penalty for nepotism? (Missouri Constitution, Art VII, Section 6)

Answer: The penalty for nepotism is automatic forfeiture of office. Legal action may be pursued to remove the individual from office or employment.

5. **Question:** Can an elected or appointed public official, such as a board member, vote to hire a relative?

Answer: The ability to vote to hire a relative depends on the degree of relationship. The Missouri Constitution prohibits an elected or appointed public official from voting to hire a relative within the 4th degree, by blood or marriage.

6. **Question:** Does nepotism apply to an already existing employee? (Missouri Constitution)

Answer: The constitutional provision applies to the naming or reappointing. The elected or appointed official should not:

- ✓ Reappoint the employee
- ✓ Vote on the appointment or employment
- ✓ Vote on any action that may directly affect/give special monetary benefit to the relative

In addition, the political subdivision's policies and procedures should be consulted.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

7. **Question:** Does nepotism apply to an unpaid employee?
Answer: The nepotism provision applies to both unpaid or volunteer positions. See *Mo. Attorney General Opinion 13-1953* and/or *State ex inf. Atty. Gen. v. Shull*, 887 S.W. 2d 397, 400 (Mo. 1994) for more information. (Added 05/16/2012)
8. **Question:** Can a friend or relative of a public employee run for office and be elected to that political subdivision's board/commission? (Missouri Constitution, Chapter 105, RSMo.)
Answer: Yes, there would be no per se violation of the Chapter 105 conflict of interest laws or the Constitution's nepotism clause. However, the elected board/commission member cannot vote to employ or reemploy the relative, if related within the 4th degree by blood or marriage. The board/commission member must recuse themselves from voting on any matter that would directly affect or give special monetary benefit to the family member.
9. **Question:** Can family members be elected to the same governing bodies, boards or commissions? (Missouri Constitution)
Answer: This depends on whether the governing body, board or commission has any laws prohibiting family members from serving. The nepotism clause addresses naming, appointment and employment, not election.
10. **Question:** Can a school board member remain on the board if the spouse becomes employed by the District? (Missouri Ethics Commission Advisory Opinion 2002.01.101)
Answer: Yes, but the board member may not vote to reemploy the spouse and must recuse themselves from any vote which would give a special monetary benefit to the board member or spouse.
11. **Question:** Should a public officer or employee, with a relative (within the 4th degree, by blood or marriage) also employed by the political subdivision vote on items such as wage increases or the budget that would include the relative's salary? (Missouri Ethics Commission Advisory Opinion 2004. 01.101)
Answer: The public officer or employee may vote on items described above since all members of the class receive the same benefit and the public officer or employee is not acting on a matter specifically designed to provide a special monetary benefit to the relative.

Legislators and Statewide Elected Officials

1. **Question:** Can legislators be employed by the State or the political subdivision they represent? (Section 105.456, RSMo.)
Answer: No, members of the Missouri General Assembly may not be employed by any agency of the state or a political subdivision while serving in the State House or Senate.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

2. **Question:** Can legislators or statewide elected officials conduct business with the political subdivision? (Section 105.456, RSMo.)

Answer: Yes, under the following circumstances:

- ✓ If the business was awarded to the legislator, official, or business of the legislator or official after public notice, competitive bidding *and* the award was to the lowest bidder *or*
- ✓ The service, sale/rent/lease of a property, or business transaction conducted with the political subdivision was no greater than \$500 per transaction or \$1,500 annually.

3. **Question:** Can legislators be employed by companies that do business with the state? (Missouri Ethics Commission Advisory Opinion 2009.04.CI.002, 2008.09.CI.007)

Answer: Yes, but legislators should not vote on any measure which would give preferential treatment to the company or special monetary benefit to the legislator, spouse, or dependent child. The legislator must disclose any substantial interest in a bill before voting.

4. **Question:** Can legislators or statewide elected officials purchase, rent or lease property from the state or their District? (Missouri Ethics Commission 2007.02.CI.003)

Answer: Yes, the conflict of interest statutes do not directly address the purchase, rent, or lease of property from a political subdivision. The legislators or statewide elected officials should ensure that they have not acted to give themselves a special monetary benefit or that they are not treated any differently than any member of the general public. They cannot use or disclose confidential information related to the transaction.

Performing Service/Conducting Business with a Political Subdivision

NOTE: Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."

1. **Question:** What are the bidding requirements that apply to political subdivisions? (Chapters 50, 105, RSMo.)

Answer: The political subdivision should look at their adopted purchasing ordinances and policies for specific requirements as well as Chapter 50, RSMo. – county purchasing; and Chapter 105, RSMo. – public officials.

2. **Question:** Do the conflict of interest statutes state what public notice or competitive bidding rules must be followed by a political subdivision? (Missouri Ethics Commission Advisory Opinion 1998.11.113)

Answer: No, the statutes contain no prescribed method for public notice. In the absence of a specific statute or rule which applies to the political subdivision, the Commission recommends that the required notice be given either through a newspaper advertisement, a public notice place in various areas designated for such, or the notice be given during an official meeting. It is important that the public be made aware of the notice.

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

3. **Question:** Can an elected or appointed public official, employee, or member of the governing body conduct business with the political subdivision? (Section 105.454, 105.458, RSMo.)

Answer: *Only* if the business was awarded to the public official/employee after public notice, competitive bidding, and the award was to the lowest bidder. The public official may perform a service, sale/rent/lease property, or transact business with the political subdivision for no amount greater than \$500 per transaction or \$5,000* a year without bidding/public notice. This requirement applies to officials and employees serving in executive or administrative capacities.

***NOTE:** Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."

4. **Question:** Can an elected or appointed public official, employee, or member of the governing board purchase, rent, or lease property from the political subdivision? (Section 105.452, 105.458 RSMo.)

Answer: The conflict of interest statutes do not directly include bidding and notice requirements for the purchase, rent or lease of property from a political subdivision. The official or employee should ensure that they have not acted to give themselves a special monetary benefit, or that they are not treated any differently than any member of the general public. They cannot use or disclose confidential information related to the transaction. The political subdivision must follow its laws related to bidding and public notice.

5. **Question:** Is there a dollar amount that an elected or appointed public official or employee can conduct business with the political subdivision without competitive bidding and public notice? (Section 105.454, RSMo.)

Answer: Yes, they may perform a service, sale/rent/lease property to the political subdivision, or transact business with the political subdivision for no amount greater than \$500 per transaction or \$5,000* a year.

***NOTE:** Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."

6. **Question:** Do the public notice and competitive bidding laws apply to all officials and employees of the political subdivision? (Section 105.454, 105.456, 105.458, RSMo.)

Answer: The laws specifically apply to:

- ✓ Elected or appointed officials or employees of the state or a political subdivision, serving in executive or administrative capacities
- ✓ Members of general assembly and statewide elected officials
- ✓ Members of governing bodies of political subdivisions

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions
UPD 06/23/2015

[Back to Index](#)

7. **Question:** What are the penalties for the public official or employee who violates the Chapter 105 conflict of interest laws and/or their political subdivision's ordinances/policies relating to conducting business?

Answer: A complaint can be filed with the Missouri Ethics Commission against the official or employee. The Commission may assess penalties, including financial penalties, against the official or employee.

Political Appointments

1. **Question:** Can an individual seeking a political appointment promise anything of value in exchange for a political appointment? (Section 105.452.2, RSMo)

Answer: Missouri law states that no elected or appointed official or employee of any political subdivision shall offer, promote, or advocate for a political appointment in exchange for anything of value to any political subdivision. This law applies to existing officials and employees, and only addresses anything of value to the political subdivision.

2. **Question:** Do any laws forbid the making of a political appointment in exchange for something of value? (Section 105.452.1, RSMo.)

Answer: Yes, an elected or appointed official or any employee of the state or a political subdivision may not act, such as making an appointment, by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value to themselves or any third person. This includes any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, such as making an appointment.

Quid Pro Quo

1. **Question:** Does Missouri have any laws addressing quid pro quo by a public official or employee? (Section 105.452.1, RSMo.)

Answer: Yes, an elected or appointed official or any employee of the state or a political subdivision may not act or refrain from acting by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value to themselves or any third person. This includes any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act.

Voting

1. **Question:** Can a public official or employee vote on a matter in which they have a financial interest? (Section 105.454, RSMo.)

Answer: Missouri law provides that no elected/appointed official or employee which serves in an executive or administrative capacity may participate in any matter, in which he or she attempts to influence any decision of any agency of the state or political subdivision when he or she knows the result of such decision may be the acceptance of

Missouri Ethics Commission
Conflict of Interest
Frequently Asked Questions

UPD 06/23/2015

[Back to Index](#)

the performance of a service or the sale, rental, or lease of any property to that agency for consideration in excess \$500.00 per transaction or \$5,000.00* per annum to him or her, spouse, a dependent child in custody or to any business with which he or she is associated unless the transaction is made pursuant to a contract made after public notice for real property, and public notice or competitive bidding for other property. The official or employee's bid must be the lowest received. This includes officers and members of a Board of Directors which does business with the state.

***NOTE:** Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum.."